

### **REMARKS**

Applicants thank the Examiner for the thorough consideration given the present application.

Claims 1-4 are pending and claim 1 is independent. Claim 1 is amended and the specification is also amended. No new matter is added. For instance, amended claim 1 is supported by at least pages 1 and 5 of the present specification. Amended Example 1 of the present specification provides the relevant deposit descriptions based on the attached copy of deposit receipt. Thus, no new matter is added.

The Examiner is respectfully requested to reconsider the rejections in view of the following remarks.

#### **Claim Objection**

Claim 1 is objected to due to a certain informality. Claim 1 is amended according to the Examiner's suggestion. By way of this, the objection is moot.

#### **Issue under 35 U.S.C. § 112, first paragraph**

The Examiner has rejected claims 1-4 for failing to meet the enablement requirement. This rejection is respectfully traversed.

To address the enablement rejection, Applicants provide indications of the availability of claimed strain in the present specification as explained above. This availability is evidenced by the attached copy of deposit receipt.

Also, Applicants hereby declare the following: All restrictions imposed by the depositor on the availability to the public of the following microorganism will be irrevocably removed upon the issuance of a patent: *Lactobacillus paracasei* CJLA0310 (Accession Number: KCCM-10542).

By way of the present submission, this rejection is resolved. Therefore, the Examiner is respectfully requested to withdraw the 35 U.S.C. §112, first paragraph rejection.

**Issue under 35 U.S.C. §101**

Claim 1 is rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

In view of the foregoing amendments, it is respectfully submitted that this rejection has been addressed. In particular, claim 1 has been amended to recite “an isolated *Lactobacillus paracasei* CJLA0310 (Accession Number: KCCM-10542) strain from Kimchi, characterized by having excellent lactic acid production capacity and high growth rate.” Therefore, it is believed that claim 1 is directed to statutory subject matter.

Reconsideration and withdrawal of the rejection under 35 U.S.C. §101 are therefore respectfully requested.

**Issues under 35 U.S.C. §§102(b) and 103(a)**

The Examiner has rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Richer et al. (Acta Biotechnol. 1994, Vol. 14, No. 4, p. 367-378). Also, the Examiner has rejected claims 1-4 under 35 U.S.C. §103(a) as being obvious over Richer in view of Carlson (USP No. 6,475,759 B1), and further in view of Alm L (J. Dairy Sci., 1982, Vol. 65, p. 515-520). These rejections are respectfully traversed.

While not conceding the Examiner's rejections, but to merely advance prosecution, claim 1 is amended to further emphasize the distinctions between the present invention and the cited art.

Claim 1 of the present invention is directed to an isolated *Lactobacillus paracasei* CJLA0310 (Accession Number: KCCM-10542) strain from Kimchi, characterized by having excellent lactic acid production capacity and high growth rate.

Richter relates to L(+)-lactic acid from sweet sorghum and a strain of *Lactobacillus paracasei* No. 8 from the ATB's own culture collection (Germany). This strain produces L(+)-lactic acid. See page 368 of Richter.

However, the claimed strain *Lactobacillus paracasei* CJLA0310 (Accession Number: KCCM-10542) strain isolated from Kimchi and Richter's strain are clearly distinct and thus, the present invention is neither anticipated by nor obvious over the Richter reference.

Also, Carlson's method, using a strain of *Lactobacillus paracasei*, (ATCC #25599) is different from claim 2 of the present invention because the claimed method is carried out by cultivating *Lactobacillus paracasei* CJLA0310 (Accession Number: KCCM-10542) strain isolated from Kimchi, which is a strain distinguishable from Carlson's strain. See Example 6 of Carlson. Further, Alm cannot make up for the deficiencies of Richter and/or Carlson because Alm still fails to disclose the claimed strain.

Therefore, the claimed invention is patentably distinct from these cited references individually or in combination. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

### **Conclusion**

In view of the above remarks, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie Reg. No. 42,874 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No. 10/582,389  
Amendment dated September 1, 2009  
Reply to Office Action of April 1, 2009

Docket No.: 3884-0128PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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Attachment: A copy of the deposit receipt CJLA0310 (Accession Number: KCCM-10542)